

Dunsmore, Dean (ENRD)

From: Dunsmore, Dean (ENRD)
Sent: Monday, October 02, 2006 4:24 PM
To: 'paulsh@us.ibm.com'
Subject: RE: Shearer v. US

Paul,

With respect to the government's pending motion for partial summary judgment regarding the Pittsburgh, Pennsylvania and Keystone lode claims (PPK claims), I sincerely suggest that you consult with private counsel regarding that motion and the discovery you claim is needed before you respond to that motion. Otherwise, I fear that your proposal below will merely create wasteful and unnecessary proceedings.

I also suggest that you remember what I have previously told you. The Government has no "title chain" for the PPK claims other than any that might be found in the materials made available to you at the offices of the National Park Service and which you have taken the opportunity to examine. The Government also has no current plan to have any such "title chain" prepared as that is deemed to be unnecessary. The Government also has no duty in responding to discovery to prepare any such title chain. You may ask us to produce what we have, but not require the preparation of what we do not have.

Further, you do not need a "title chain" from the United States to respond to the pending motion directed to the PPK claims. The only remaining claim you have in this action is for an alleged taking of the PPK claims by operation of section 120 of the Act of November 14, 1997. That is also the only claim with respect to the PPK claims that the Government's pending motion addresses. In order to prevail on that claim you must have owned in an interest in the PPK claims on February 12, 1998. As the Government has shown, if you held any interest in the PPK claims prior to that date you conveyed that interest to the grantors to the United States who in turn then conveyed the PPK claims to the United States. In the title chains you have provided for the PPK claims, you do not claim or purport to have acquired any interest in the PPK claims after the United States acquired the PPK claims from your grantees. You certainly have peculiar and unique knowledge as to whether you subsequently acquired any such interest. You have no need for any title chain from the United States to show that you acquired any such interest. You know whether you did or not.

A title chain is also not needed for the period prior to your conveyances to the Government's grantors. You conveyed whatever interest you had, if any, to your grantees. What interest you may have held, if any, and how you acquired it is all that any such title chain will show. That is not relevant or material to the government's motion or even to your section 120 claim, as you conveyed whatever interest you had prior to February 12, 1998.

The Government has identified for you how it acquired the title it claims and provided copies of the deeds by which it obtained that title. While a title chain might theoretically show that the Government's grantors may not have held title, the prerequisite fact for your section 120 claim is whether you owned an interest in the PPK claims on the critical date of February 12, 1998 (and the record shows that you had conveyed any such interest you held to the Government's grantors). You must have owned an interest on February 12, 1998, and you are peculiarly possessed with the knowledge of whether you did or not and the basis for any such claim. You do not need discovery from the United States of your own knowledge and actions.

Thus, the Government will oppose any request for enlargement of time to respond to its pending motion for partial summary judgment based on a claim that you need discovery responses before you can respond to that motion. As in the past, the Government will extend to you the same courtesy it extends to parties represented by counsel. If you have other valid and good cause reasons why you cannot meet the current deadline for responding to the Government's motion and you propose a date certain for the filing of your response, the Government will consider that request and might, if warranted, agree to the same.
 dean

-----Original Message-----

From: paulsh@us.ibm.com [mailto:paulsh@us.ibm.com]
 Sent: Sunday, October 01, 2006 2:02 AM
 To: Dunsmore, Dean (ENRD)
 Subject: Re: Shearer v. US

Dean Dunsmore,

I disagree with your position that Shearer's unanswered discovery requests with respect to Pittsburg, Pennsylvania and Keystone do not contain information needed for Shearer's response to the defendants motion regarding the PPK claims.

Shearer has requested the governments title chain that is the basis of the governments ownership of PPK claims.

Shearer has requested the title chain in his discovery request and has visited the NPS Lands Division in Anchorage to request this title chain and the title chain has not yet been delivered by the government.

Shearer will be requesting that title chain and a completed response to Shearer's discovery requests be delivered before Shearer responds to the government's motion.

Paul Shearer
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"Dean.Dunsmore@us
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 Paul Shearer/Beaverton/IBM@IBMUS
 09/18/2006 02:51 CC
 PM Subject
 Shearer v. US

Regarding document production and any agreement between Paul Harrison and yourself, I have forwarded your two responses for documentation of any such agreement to Paul Harrison.

As to any need for materials in order for you to respond to the Government's pending motion for partial summary judgment. I have reviewed the Government's responses to your first discovery request specifically with respect to the Pittsburg, Pennsylvania and Keystone claims (PPK claims). I believe those responses set forth the basis for defendants' source of its title to the PPK claims and the lack of any valid claims by you of ownership of those claims in February 1998. See Defendants' response to your first set of discovery, Interrogatories 5 & 6 at 12-14, and

Requests for Admissions Nos. 36-38 at 54-55, Nos. 40-44 at 55-58, Nos. 47-50 at 59-61, Nos. 53 at 62-63. No other information is needed for you to respond to defendants motion regarding the PPK claims.

The remainder of defendants' motion does not involve title issues, but the nature of the claimed interest that was taken and the scope of Section 120. Purely legal issues are presented. Further, none of your discovery requests seeks information with respect to these issues,

Therefore, the United States will oppose any request by you for any enlargement of time to respond to the Government's pending motion based on any need for further responses to your discovery or any needed for additional discovery. dean